

THE
INSURANCE
COMMISSION

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THE

Insurance Commission

AND THE

Foresters' Case

Short History of the Proceedings

Mr. Foster's answers to the charges and reflections concerning
his management of the Union Trust Company



HISTORICAL SKETCH.

HOW A COMMISSION TO INVESTIGATE INSURANCE WAS TURNED INTO A ONE-SIDED POLITICAL INQUISITION

Terminating with a False and Slanderous Report, which
Could Not be Defended in Parliament.

The report of the Insurance Commission and the proceedings upon which it was based are important in two particulars: first from their bearing upon the question of insurance, and, secondly, from their partisan political aspect. It is with the latter standpoint that this statement deals.

How It Got Into Politics.

Though in the beginning there was probably no intention to use the Commission as a political weapon the investigation was very early turned in that direction. This was due to the circumstance that Hon. Geo. E. Foster was connected as manager with the Union Trust Company, in which the Independent Order of Foresters held a controlling interest, and that this company had loaned from its capital certain moneys to the Great Western Land Company, in which Mr. Foster and others were interested, and also to the Kamloops Lumber Company, in which Messrs. Fowler and McCormick had an interest. It also came to the knowledge of Mr. Shepley, the prosecuting counsel named by the Government, that the above mentioned Great Western Land Company had purchased lands from a syndicate composed of Messrs. Foster, Wilson and McGillivray, who had bought from Messrs. Fowler, Pope, Bennett and Lefurgey. These vendors had purchased from the Canadian Pacific Railway Company. With the exception of Mr. Wilson they were all members or ex-members of Parliament, and all prominent Liberal-Conservatives. Mr. Wilson was a well known lawyer and an active member of the same party.

MR. SHEPLEY EMPLOYED.

Certain Liberal leaders, among them Ministers and former Ministers

of the Crown, quickly discerned the opportunity for partisan capital to be found in connecting the names of these political opponents with the public prosecution before the Commission, and the production of evidence which might be used to their prejudice. This they set themselves to do through Mr. Shepley, who was a strong partisan of the present Minister of Justice, with whom he kept in constant touch either by written or verbal communication, and from whom he regularly received information and suggestions. Mr. Shepley was before this time, and has been subsequently engaged as counsel for the Crown in other transactions, and had received generous rewards from the public treasury.

HOW THE PROSECUTION WAS MANAGED.

The Commission, under Mr. Shepley's guidance, opened the door wide for the sort of work required, by two ingenious expedients:—(1) The permission to Mr. Shepley to pursue undeclared charges far beyond the legitimate purpose of the inquiry against the public men who were to be attacked, and (2) the refusal to allow them the right of demanding definite preferred charges or of counsel to cross-examine witnesses and furnish evidence in rebuttal.

Before such a court and under such conditions these gentlemen were practically arraigned on undeclared charges, which were pressed with all the skill and ingenuity of a practiced lawyer, while they themselves had neither the benefit of counsel nor the guarantee of fair play afforded in an ordinary Court of Law. Yet not one of these public men was in any way connected with the insurance company under investigation, or in the conduct of any business of insurance.

THE POSITION OF THE PERSONS ATTACKED.

Messrs. Pope, Fowler, Bennett and Lefurgey were buyers of land in the North-West, and sellers to Messrs. Foster, Wilson and McGillivray as private purchasers. Messrs. Foster, Wilson and McGillivray as private parties sold this land to a company of which they then became directors. To this company the Union Trust Company made a loan, well secured, at good interest, which has given the Trust Company a fine profit.

Messrs. Foster, Wilson and McGillivray were directors of the Union Trust Company, but not a controlling majority thereof, and the loan was made upon full disclosure of all the facts and after authoritative declaration as to its legality.

Messrs. Fowler and McCormick held an interest in the Kamloops Lumber Company, which on open agreement and full security received a loan from the Union Trust Company. That loan has been paid off, and resulted in a handsome profit to the Trust Company.

HOW TO PRODUCE A FALSE IMPRESSION.

The purpose of Mr. Shepley appeared to be to connect the names of the above mentioned opponents of Government, especially that of Mr. Foster, with various business transactions, so far as he could do it by questioning other witnesses, in most cases those who knew little or nothing at first hand, so as to give an inference of wrongdoing, and allow the party press to do the rest, before an opportunity was given to contradict or explain.

The party press carried out its share of the programme, and every Government organ, beginning with the Toronto Globe, by flaring headlines, sensational reports and editorial verdicts, contributed toward the attack on obnoxious opponents of the Government.

A ONE-SIDED ENQUIRY.

After a sufficient time had been allowed to produce the required impression, Messrs. Foster, Fowler and Lefurgey were permitted to answer such questions, and such questions only, as Mr. Shepley, the prosecutor, chose to ask them. Their counsel was not allowed to cross-examine any witnesses. Mr. Foster was permitted to make a short statement under oath, but this is ignored in the report of the Commission.

In the end when the Commissioners were engaged nominally in drawing up their report, Mr. Shepley, the prosecutor, was continued at one hundred dollars a day salary, plus a retaining fee, amount then unsettled, to assist in their work. The Government seemed to see no inconsistency in thus employing the prosecutor to take part in preparing the judgment. In the House of Commons, and in the presence of the Minister of Justice and other Ministers, Mr. Fowler asserted that Mr. Shepley wrote the whole of the report and findings of the Commission. The Government did not deny it.

GREAT EXPECTATIONS.

The purpose of all this was to create an impression outside of Insurance matters altogether, adverse to certain aggressive opposition members of Parliament. It was hoped and expected that well meaning people would be led to doubt their integrity. By the Government press Parliament was called upon to purge itself of these Conservative members, and some of the organs went so far as to declare that Mr. Foster would not dare to face his opponents, or that if he appeared in Parliament he would not venture to attack the Government.

THE SCHEME DID NOT WORK.

Parliament met on the twenty-third of November. Mr. Foster was there. The Government soon discovered that he had not been silenced. On

the second day of the session he made a vigorous attack on the Government and its policy, alluding to the Royal Commission in plain terms. He next proceeded to make full inquiry in the House as to the connection of Mr. Aylesworth, the Minister of Justice, with the prosecuting counsel and with the conduct of proceedings. Mr. Foster took an early opportunity to challenge his accusers to bring their criticism of his conduct or their charges against him definitely before the House. As soon as the report had been produced, and fair time given for its study he repeated the challenge. No Minister or Opposition member accepted this invitation, and the Premier himself admitted that he could find nothing upon which a charge could be made in the House. Finally, when no political opponent would move in the matter, Mr. Foster himself set a day for discussing the report and requested his accusers to be ready.

THE DISCUSSION IN PARLIAMENT.

On the day named Mr. Foster proceeded first to make a statement in his own behalf, and secondly, to arraign the conduct and report of the Commission as grossly unfair throughout, and to show that the report itself was absolutely false in many important particulars.

Only one member of the House came to the defence of the Commission, or even attempted to make good the charges that had been freely bandied about by Government organs and orators throughout the country. This was Hon. A. B. Aylesworth, Minister of Justice, the man who recommended his friend and ardent supporter, Mr. Shepley, for the position of prosecuting counsel, and who kept in touch with him by communications and suggestions while he was in pursuit of political opponents. Mr. Borden and eight other Conservative members followed the Minister, exposing the suppressions of truth, suggestions of falsehood, and the actual false statements appearing in the report. They discussed the record of some of the Commissioners, notably that of the chairman, who had served on a Commission appointed by Premier Ross to investigate the West Elgin election steal, and had not been able to find any serious wrong in that notorious series of election crimes.

CHARGES AGAINST FOWLER, BENNETT AND LEFURGEY COLLAPSE.

It should be stated that so far as Mr. Fowler was concerned the Government and its friends practically abandoned all charges and insinuations. Even Mr. Aylesworth had nothing to say in criticism of Mr. Fowler's course in the transactions discussed. Mr. Aylesworth also admitted that the whole transaction was in no degree to the discredit of Mr. Bennett. Mr. Lefurgey stands in the same position. It is, therefore, not necessary to present their statement in defence, since the spokesman for the Government found no case against them.

On the week following the first discussion Mr. Lemox submitted a

resolution condemning the conduct of the Commission, when the mover himself, with Mr. Foster and Mr. Borden, again reviewed the record, and not a man on the Government side uttered a word in the defence of the Commission. The resolution condemning the Commission was supported by every Liberal-Conservative member in the House.

THEY WERE AFTER MR. BORDEN, TOO.

On both occasions Mr. Borden referred to the attempts of Mr. Shepley and the prosecution to connect the Opposition leader with the transaction they were investigating as a political side issue. By persistent and ingenious questioning, by inferential statements and by various methods and suggestions, Mr. Shepley struggled to create the impression that Mr. Borden had been connected with Western land transactions. The intense desire to raise some cry against the Opposition leader and the terrible disappointment caused by the failure are shown by the illustrations furnished in Mr. Borden's speech here published.

Charges Affecting Mr. Foster.

MADE OR SUGGESTED BY THE COMMISSION OR BY THE PRESS—WITH THE ANSWERS AND FACTS IN REGARD TO EACH CHARGE

CHARGE NO. 1.

That Mr. Foster formed the Union Trust Company and that as its manager he made improper and illegal investments of the Forester's trust funds.

THE FACTS.

Mr. Foster did not originate the idea of a trust company for the investment of the Foresters' funds, and is in no way responsible therefor. The late Dr. Oronhyatekha, Supreme Chief Ranger; Mr. Gillivray, Supreme Chief Secretary; Mr. Stevenson, Supreme Chief Commissioner, and the other members of the Supreme Court of the Foresters made that decision. They then bought up the Provincial Trust Company, expending the Foresters' money for this purpose. Afterwards they sought and obtained a charter for the Union Trust Company to take over the old Provincial company and decided to invest \$2,700,000 of Foresters' funds in the capital stock of the Union Trust Company, which gave the Foresters practical ownership. Next they authorized the investment of the capital stock thus provided in the securities permitted under the charter, and by the laws governing loans and trust companies of Ontario. After this they selected a board of directors and appointed a general manager to carry on the operations of the trust company. Mr. Foster was the general manager appointed, and under the board of directors made the investments of the \$2,700,000 capital stock.

Every dollar of that money was legally invested according to the law of the Province and the charter of the company of which Mr. Foster was manager.

Besides the above named capital investments, the Supreme Court of the Foresters made a contract with the Union Trust Company to invest such of its monthly surplus as the council decided. This surplus, according to the contract, was to be invested only in such securities as are permitted by the Insurance Act.

Every dollar of this surplus was invested by the directors and the general manager in such securities and in no others. The investments were not only legal but they were extremely profitable.

For the creation of the Trust Company and for the investment of Foresters' trust funds therein the members of the Supreme Court of the Foresters were alone responsible. If it was praiseworthy, to them the praise. If it was blameworthy, on them the blame. In either case Mr. Foster's work was to invest, according to the law and charter of his own company, what was placed in his charge. This he did legally, prudently and profitably.

CHARGE No. 2.

That in some way not definitely explained, Mr. Foster imperilled and sacrificed the Foresters' funds, thus impairing the resources of the widows and orphans of the insured.

THE FACTS.

Mr. Foster had nothing to do with the trust funds of the Foresters except as stated in No. 1. He was not a member or an officer of the Foresters. His work was in the Trust Company and with such funds as were placed there by the Supreme Court of the Foresters as capital stock or surplus. These he invested under direction of the board in legal and authorized securities. The records show that these investments were profitable.

Year.	Net Profits.	Reserve.	Assets.
1901 (4 months)	\$ 18,787	\$ 151,007
1902	39,067	\$225,000	1,984,132
1903	68,727	250,000	3,077,596
1904	94,057	280,000	4,361,080
1905	122,338	370,000	5,874,508
1906	183,898	400,000	8,000,000
Total	\$526,871		

Average yearly profits, \$105,375.

Compare this record with that of the Toronto General Trust, the oldest and strongest and most influential trust company in Canada. It was formed in 1882, and has just closed its twenty-fifth year.

Here is its record for the first and fifth five-year periods respectively:

	First Five Years.	Fifth Five Years.
Net profits	\$72,500	\$545,500
Reserve in 1906		375,000
Assets in 1906		30,000,000

It thus appears that in the first five years of its existence the Union Trust Company made in profits \$526,874, as compared with \$72,500 made in the first five years of the Toronto General, and with \$545,500 in its fifth five years.

No other trust company in Canada has made anything like the record of the Union Trust company in respect of earned profit. So it is clear that the Foresters' funds have been vastly bettered and the resources of the widows and orphans greatly augmented under Mr. Foster's management of the company.

CHARGE No. 3.

That Mr. Foster abused his position by taking commissions for himself out of Union Trust funds upon purchases of land made by him for the Union Trust Company.

THE FACTS.

The simple answer to this statement is that it is absolutely false. Mr. Foster never took any commission for land purchased by him for the Union Trust Company, or through the Union Trust Company, or in pursuance of any trust held by the Union Trust Company.

The matter referred to is known as the Montague Syndicate transaction. With this transaction the Union Trust Company had no connection except to hold the titles of certain lands bought by private parties, with money neither provided nor controlled by the Trust Company. For thus acting as holding agent the company was paid the regular fee for its services by the private parties interested.

The facts are these:

Dr. Oronhyatekha, Supreme Chief Ranger; Mr. McGillivray, Supreme Secretary, both members of the Supreme Council of the Foresters and of the Foresters' loaning board, and Dr. Montague, Deputy Supreme Ranger, but not a member of the Court or loaning board, decided to purchase lands for themselves in the North-West, borrowing therefor on security of the land from the Foresters at five per cent. interest, and on conditions shown in the mortgage. Dr. Montague was to hold the titles for the partners, so as to make proper transfers as lands were sold, and he also held the interest of the purchasers in trust. These three invited Mr. Foster, who was not a Forester, to join them, which he did. They bought 14,000 acres of land. This property was valued, and \$133,000 was advanced by the Supreme Court on first mortgage security. The loan was made by the Foresters, March 28th, 1902, and the Union Trust Company had nothing whatever to do with it.

In May, 1903, the partners decided to have the Trust Company take the place of Dr. Montague, as holders of the titles and securities only. For this routine and mechanical business the Union Trust Company was engaged and paid by the four gentlemen named. As holding trustee it had nothing to do with bargaining for or buying or selling their land, and had no financial or beneficial interest in any way.

Afterward other lands were bought by the syndicate, money was ad-

vanced by the original lender, upon the same conditions as before, and the titles were held by the Trust Company for similar reasons.

One of these purchases of 40,000 acres was made from a Western land company through its selling agent, Mr. Pritchard. The price at which Pritchard was to sell was \$5 per acre, and his commission was to be \$10,000 out of that amount. The agent's commission was part of the selling price. In order to further the sale this agent agreed to allow the purchaser one-half his commission, or \$5,000. This was carried out, and the amount by which the price of the land was reduced was divided as profits equally among the four, two of whom represented the lenders. The transaction was openly carried out, passed through the books and audited. At that time the Syndicate had paid the year's interest on its mortgage out of profits, and was not in arrears under its agreement with the lender.

The Union Trust Company had no beneficiary interest or trust in any way, and no breach or abuse of trust was, therefore, committed by Mr. Foster.

The same is true respecting a later purchase of 9,000 acres by the same Syndicate and in the same way. The only question that could be raised in relation to this whole transaction is the propriety of the officers of the Supreme Court lending Foresters' money to themselves. But this could not apply to Mr. Foster, who was neither a Forester nor a member of the Court. In the end the Foresters received every dollar of their loan and interest thereon.

CHARGE No. 4.

That Mr. Foster took a commission in the Kamloops property purchase.

THE FACTS.

Mr. Foster contradicted this statement flatly on oath. He explained to the Commission in part his private financial transaction with Mr. Fowler. He offered to give the full details to the Commission privately in order that they might satisfy themselves that the transaction was purely a private business affair. This offer was accepted by the Commission. No witness was questioned nor was any evidence adduced to support Mr. Shepley's suggested charge.

Yet the Commission so worded their report, so suppressed Mr. Foster's evidence, that on the face of their summary statement this absolutely false charge appears as though it had substantial foundation. This suppression of truth and suggestion of falsehood has every appearance of malice and deliberate intention to slander.

CHARGE No. 5.

That Mr. Foster in the Great West land transaction diverted trust funds

in loans to himself and his friends without disclosing the facts to the Trust Company.

THE FACTS.

Mr. Foster, Mr. Wilson and Mr. McGillivray, in their private capacity, independent entirely of the Trust Company, purchased an option on lands as they had a legal and moral right to do. They afterward sold this option to an incorporated company at an advance, payable in stock, of 50 cents per acre, and became members of the directorate of this company, as they had a right to do. The directors, nine in number, of this company, in arranging for finances to carry its business, proposed to the Union Trust Company that the latter should make a loan to their land company on the security of the property. The Union Trust Company, after a full consideration of the proposition, and after getting the opinion of Sir John Boyd that such a loan was within the competence of the company, decided to make a loan at six per cent. secured on the company's total assets.

In addition to the interest charged the Union Trust Company was to receive a substantial bonus in stock of the land company. Full disclosure was made of all the particulars, as is shown in the evidence before the Commission and detailed in Mr. Foster's speech. There was never at any time any doubt as to the sufficiency of the security. As the Union Trust Company's chief business was and is to loan funds on adequate security, the transaction was not only within its powers but along the line of its regular business. The vast majority of the company's funds is invested in real estate securities.

The Trust Company, besides its mortgage investment, will make a handsome profit out of its stock bonus and management charges. Messrs. Foster, Wilson and McGillivray can make nothing out of the advance for which they sold their option until all mortgage and other indebtedness is cleared off and the lands liquidated.

The Union Trust Company has from the first received all money coming from the sale of lands. Not one dollar of profit in any way has gone into the pockets of Mr. Foster or any other of the directors of the land company. It was simply and solely a transaction between two companies on the basis of what the loaning company knew to be ample security.

Though some of the directors of the land company were also directors of the Trust company, no evidence was or can be produced to show that any undue influence was exerted by them. It is not illegal and certainly not unusual for directors of one company to serve as directors of another with which business is transacted.

The directors of a bank are trustees for the public in the same sense as were Mr. Foster and the directors of the Union Trust Company, but it is a regular thing for banks to make loans both to their directors and to firms of which they are members. In fact, the monthly returns of banks published

by the Government contain a column expressly for the purpose of showing the amount of these loans. The returns for March, 1907, show that the chartered banks of Canada had on the 31st of that month \$11,430,226 loaned to directors. Of the 36 banks in Canada all but one had made such advances. The following are the amounts loaned by some of the principal banks of Canada to their directors:

Bank of Commerce	\$1,801,875
Bank of Montreal	1,495,000
Bank of Toronto	1,027,073
Dominion Bank	749,600
Merchants Bank of Canada.	599,244
Royal Bank	577,930
Banque Nationale	515,617
Union Bank of Halifax	459,392
Molsons Bank	419,662

CHARGE No. 6.

But these investments might have turned out badly. Therefore Mr. Foster should be condemned for making them.

THE FACTS.

All investments might equally be condemned on this ground. Banks fail, companies collapse, growing crops are destroyed, cattle die, mines peter out, cities are burned or knocked down by earthquakes and a certain percentage of all human ventures end in disappointment. Men in positions of trust cannot always be condemned for actual failure, much less for possible failure.

Granted that the security is a legal one, that in the judgment of the investor the security is sufficient, and that reasonable precautions are taken, the investor has done his duty. In the investments made by Mr. Foster the securities were legal. In the judgment of all the directors they were adequate. All possible precautions were taken to ensure success.

They were singularly successful. The British Columbia business gave over \$75,000 clear profit and the total land business over \$300,000 clear profit.